

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 241

Introduced by Pahls, 31.

Read first time January 13, 2009

Committee: Agriculture

A BILL

1 FOR AN ACT relating to the Commercial Dog and Cat Operator
2 Inspection Act; to amend sections 54-626 and 54-640,
3 Reissue Revised Statutes of Nebraska, and sections
4 54-625, 54-627, 54-628, and 54-629, Revised Statutes
5 Cumulative Supplement, 2008; to change provisions
6 relating to licensing requirements, inspections, rules
7 and regulations, and duties of commercial breeders; to
8 define and redefine terms; to provide for stop-movement
9 orders and ownership limits as prescribed; to provide
10 violations; to harmonize provisions; and to repeal the
11 original sections.

12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 54-625, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 54-625 Sections 54-625 to 54-643 and sections 4, 6, and 8
4 of this act shall be known and may be cited as the Commercial Dog
5 and Cat Operator Inspection Act.

6 Sec. 2. Section 54-626, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 54-626 For purposes of the Commercial Dog and Cat
9 Operator Inspection Act:

10 (1) Animal control facility means a facility operated by
11 or under contract with the state or any political subdivision of
12 the state for the purpose of impounding or harboring seized, stray,
13 homeless, abandoned, or unwanted animals;

14 (2) Animal shelter means a facility used to house
15 or contain dogs or cats and owned, operated, or maintained by
16 an incorporated humane society, animal welfare society, society
17 for the prevention of cruelty to animals, or other nonprofit
18 organization devoted to the welfare, protection, and humane
19 treatment of such animals;

20 (3) Boarding kennel means a facility which is primarily
21 used to house or contain dogs or cats owned by persons other than
22 the operator of such facility. The primary function of a boarding
23 kennel is to temporarily harbor dogs or cats when the owner of
24 the dogs or cats is unable to do so or to provide training,
25 grooming, or other nonveterinary service for consideration before

1 returning the dogs or cats to the owner. A ~~facility which houses~~
2 ~~or contains thirty or less dogs or cats in a twelve-month period~~
3 ~~is not a boarding kennel.~~ A facility which provides such training,
4 grooming, or other nonveterinary service is not a boarding kennel
5 for the purposes of the act unless dogs or cats owned by persons
6 other than the operator of such facility are housed at such
7 facility overnight. Veterinary clinics, animal control facilities,
8 and nonprofit animal shelters are not boarding kennels for the
9 purposes of the act;

10 (4) Cat means any animal which is wholly or in part of
11 the species *Felis domesticus*;

12 (5) Commercial breeder means any ~~person~~ one of the
13 following:

14 (a) A person who sells, exchanges, leases, or in any
15 way transfers or offers to sell, exchange, lease, or transfer
16 thirty-one or more dogs or cats in a twelve-month period beginning
17 on April 1 of each year;

18 (b) A person who owns or harbors four or more dogs or
19 cats, intended for breeding, in a twelve-month period beginning on
20 April 1 of each year;

21 (c) A person whose dogs or cats produce a total of four
22 or more litters within a twelve-month period beginning on April 1
23 of each year; or

24 (d) A person who knowingly sells, exchanges, or leases
25 dogs or cats for later retail sale or brokered trading; engaged in

1 the business of breeding dogs or cats and (b) who sells, exchanges,
2 or leases dogs or cats in return for consideration or who offers to
3 do so, whether or not the dogs or cats are bred, raised, trained,
4 groomed, or boarded by such person. A person who owns or harbors
5 three or less unaltered dogs or cats for breeding purposes which
6 are at least six months of age shall not be a commercial breeder.

7 A person who sells, exchanges, or leases thirty or less
8 dogs or cats in a twelve-month period shall not be a commercial
9 breeder if all such dogs or cats are sold, exchanged, or leased
10 to a final owner rather than for later retail sale or brokered
11 trading. A person knowingly selling, exchanging, or leasing any
12 dogs or cats for later retail sale or for brokered trading shall be
13 classified as a commercial breeder.

14 (6) Dealer means any person who is not a commercial
15 breeder or a pet shop but is engaged in the business of buying
16 for resale or selling or exchanging dogs or cats as a principal
17 or agent or who claims to be so engaged. A person who purchases,
18 sells, exchanges, or leases thirty or less fewer dogs or cats in a
19 twelve-month period is not a dealer;

20 (7) Department means the Bureau of Animal Industry of the
21 Department of Agriculture with the State Veterinarian in charge,
22 subordinate only to the director;

23 (8) Director means the Director of Agriculture or his or
24 her designated employee;

25 (9) Dog means any animal which is wholly or in part of

1 the species *Canis familiaris*;

2 (10) Housing facility means any room, building, or areas
3 used to contain a primary enclosure;

4 (11) Inspector means any person who is employed by the
5 department and who is authorized to perform inspections pursuant to
6 the act;

7 (12) Licensee means a person who has qualified for and
8 received a license from the department pursuant to the act;

9 (13) Pet animal means an animal kept as a household
10 pet for the purpose of companionship, which includes, but is not
11 limited to, dogs, cats, birds, fish, rabbits, rodents, amphibians,
12 and reptiles;

13 (14) Pet shop means a retail establishment which sells
14 pet animals and related supplies;

15 (15) Premises means all public or private buildings,
16 kennels, pens, and cages used by a facility and the public or
17 private ground upon which a facility is located if such buildings,
18 kennels, pens, cages, or ground are used by the owner or operator
19 of such facility in the usual course of business;

20 ~~(15)~~ (16) Primary enclosure means any structure used to
21 immediately restrict a dog or cat to a limited amount of space,
22 such as a room, pen, cage, or compartment;

23 ~~(16)~~ (17) Secretary of Agriculture means the Secretary of
24 Agriculture of the United States Department of Agriculture; and

25 (18) Stop-movement order means a directive preventing the

1 movement or removal of any dog or cat from the premises; and

2 ~~(17)~~ (19) Unaltered means any male or female dog or
3 cat which has not been neutered or spayed or otherwise rendered
4 incapable of reproduction.

5 Sec. 3. Section 54-627, Revised Statutes Cumulative
6 Supplement, 2008, is amended to read:

7 54-627 (1) A person shall not operate as a commercial
8 breeder, a dealer, a boarding kennel, an animal control facility,
9 or an animal shelter unless the person obtains the appropriate
10 license as a commercial breeder, dealer, boarding kennel, animal
11 control facility, or animal shelter. A person shall not operate
12 as a pet shop unless the person obtains a license as a pet
13 shop. A pet shop shall only be subject to the Commercial Dog and
14 Cat Operator Inspection Act and the rules and regulations adopted
15 and promulgated pursuant thereto in any area or areas of the
16 establishment used for the keeping and selling of pet animals. If
17 a facility listed in this subsection is not located at the owner's
18 residence, the name and address of the owner shall be posted on the
19 premises.

20 (2) An applicant for a license shall submit an
21 application for the appropriate license to the department, on a
22 form prescribed by the department, together with the annual license
23 fee. Such fee is nonreturnable. Upon receipt of the application and
24 annual license fee and upon completion of a qualifying inspection
25 if required pursuant to section 54-630 for an initial license

1 applicant or if a qualifying inspection is deemed appropriate by
2 the department before a license is issued for any other applicant,
3 the appropriate license may be issued by the department. Such
4 license shall not be transferable to another person or location.

5 (3) (a) Except as otherwise provided in this subsection,
6 the annual license fee shall be determined according to the
7 following fee schedule based upon the daily average number of dogs
8 or cats housed by the licensee over the previous annual licensure
9 period:

10 (i) Ten or fewer dogs or cats, one hundred fifty dollars;

11 (ii) Eleven to fifty dogs or cats, two hundred dollars;

12 and

13 (iii) More than fifty dogs or cats, two hundred fifty
14 dollars.

15 (b) The initial license fee for any person required to
16 be licensed pursuant to the act shall be one hundred twenty-five
17 dollars.

18 (c) The annual license fee for a licensee that does not
19 house dogs or cats shall be one hundred fifty dollars.

20 (d) The fees charged under this subsection may be
21 increased or decreased by the director after a public hearing
22 is held outlining the reason for any proposed change in the fee.
23 The maximum fee shall not exceed three hundred fifty dollars.

24 (4) A license to operate as a commercial breeder, a
25 license to operate as a dealer, a license to operate as a boarding

1 kennel, or a license to operate as a pet shop shall be renewed by
2 filing with the department at least thirty days prior to April 1
3 of each year a renewal application and the annual license fee. A
4 license to operate as an animal control facility or animal shelter
5 shall be renewed by filing with the department at least thirty
6 days prior to October 1 of each year a renewal application and
7 the annual license fee. Failure to renew a license prior to the
8 expiration of the license shall result in an additional fee of
9 twenty dollars required upon application to renew such license.

10 (5) A licensee under this section shall make its premises
11 available for inspection pursuant to section 54-628 during normal
12 business hours.

13 (6) The state or any political subdivision of the state
14 which contracts out its animal control duties to a facility not
15 operated by the state or any political subdivision of the state
16 may be exempted from the licensing requirements of this section if
17 such facility is licensed as an animal control facility or animal
18 shelter for the full term of the contract with the state or its
19 political subdivision.

20 Sec. 4. A dealer or pet shop licensed under section
21 54-627 shall maintain a written veterinary care plan developed in
22 conjunction with the attending veterinarian for the dealer or pet
23 shop. An animal control facility, animal shelter, or a boarding
24 kennel licensed under section 54-627 shall maintain a written
25 emergency veterinary care plan.

1 Sec. 5. Section 54-628, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 54-628 (1) The department shall inspect all licensees at
4 least once in a twenty-four-month period to determine whether the
5 licensee is in compliance with the Commercial Dog and Cat Operator
6 Inspection Act. Any additional inspector or other field personnel
7 employed by the department to carry out inspections pursuant to
8 the act that are funded through General Fund appropriations to
9 the Bureau of Animal Industry shall be assigned to the Bureau of
10 Animal Industry and shall be available for temporary reassignment
11 as needed to other activities and functions of the Bureau of Animal
12 Industry in the event of a livestock disease emergency or any other
13 threat to livestock or public health. When an inspection produces
14 evidence of a violation of the act or the rules and regulations
15 of the department, a copy of a written report of the inspection
16 and violations shown thereon, prepared by the inspector, shall be
17 given to the applicant or licensee, together with written notice to
18 comply within the time limit established by the department and set
19 out in such notice. ~~The premises of the applicant or licensee shall~~
20 ~~be open for inspection. The department and any officer, agent,~~
21 ~~employee, or appointee of the department shall have the right to~~
22 ~~enter upon the premises of any person who has, or is suspected of~~
23 ~~having, any dog or cat thereon or any sanitation, housing, or other~~
24 ~~condition or practice that is in violation of the act.~~

25 (2) If deemed necessary under the act or any rule

1 or regulation adopted and promulgated pursuant to the act, the
2 department may, for purposes of inspection, enter the premises of
3 any applicant or licensee during normal business hours and in a
4 reasonable manner, including all premises in or upon which dogs
5 or cats are housed, sold, exchanged, or leased or are suspected
6 of being housed, sold, exchanged, or leased. For purposes of this
7 subsection, premises includes all buildings, vehicles, equipment,
8 cages, kennels, containers, and pens and all records on such
9 premises. The department shall not be subject to any action for
10 trespass or damages resulting from compliance with this subsection.
11 Pursuant to an inspection under this subsection, the department
12 may:

13 (a) Enter the premises of any applicant for a license
14 under the act to determine if the applicant meets the requirements
15 for licensure under the act;

16 (b) Access all premises and examine and copy all records
17 pertaining to compliance with the act and the rules or regulations
18 adopted and promulgated under the act. The department shall have
19 authority to gather evidence, including, but not limited to,
20 photographs;

21 (c) Inspect or reinspect any vehicle or carrier
22 transporting or holding dogs or cats that is in the state to
23 determine compliance with the act or any rules or regulations
24 adopted and promulgated under the act;

25 (d) Obtain an inspection warrant in the manner prescribed

1 in sections 29-830 to 29-835 if any person refuses to allow the
2 department to conduct an inspection pursuant to this section; or

3 (e) Issue and enforce a written stop-movement order
4 pursuant to section 6 of this act.

5 (3) For purposes of this section, the private residence
6 of any applicant or licensee shall be available for purposes of
7 inspection only if dogs or cats are housed in a primary enclosure
8 as defined in 9 C.F.R. 1.1 within the residence, including a room
9 in such residence, and only such portion of the residence that is
10 used as a primary enclosure shall be open to an inspection pursuant
11 to this section.

12 Sec. 6. (1) The department may issue a stop-movement
13 order if the department has reasonable cause to believe that there
14 exists noncompliance with the Commercial Dog and Cat Operator
15 Inspection Act or any rule or regulation adopted and promulgated
16 pursuant to the act, including, but not limited to, reasonable
17 cause to believe unreasonable sanitation or housing conditions
18 exist.

19 (2) Such stop-movement order may require the violator to
20 maintain the dogs or cats subject to the order at the existing
21 location or other department-approved premises until such time as
22 the department has issued a written release from the stop-movement
23 order. The stop-movement order shall clearly advise the violator
24 that he or she may request an immediate hearing before the
25 director.

1 (3) Pursuant to the stop-movement order, the department
2 shall have the authority to enter the premises to inspect and
3 determine if the dogs or cats subject to the order or the
4 facilities used to house or transport such dogs or cats are kept
5 and maintained in compliance with the requirements of the act and
6 the rules and regulations adopted and promulgated pursuant to the
7 act. The department shall not be liable for any costs incurred
8 by the violator or any personnel of the violator due to such
9 departmental action or in enforcing the stop-movement order. The
10 department shall be reimbursed by the violator for the actual
11 costs incurred by the department in issuing and enforcing any
12 stop-movement order.

13 (4) A stop-movement order shall include:

14 (a) A description of the nature of the violation;

15 (b) The action necessary to bring the violator into
16 compliance with the act and the rules and regulations adopted and
17 promulgated pursuant to the act; and

18 (c) The name, address, and telephone number of the
19 violator who owns or houses the dogs or cats subject to the order.

20 (5) Before receipt of a written release, the person to
21 whom the stop-movement order was issued shall:

22 (a) Provide the department with an inventory of all dogs
23 or cats on the premises at the time of the issuance of the order;

24 (b) Provide the department with the identification tag
25 number, tattoo number, microchip number, or any other approved

1 method of identification for each individual dog or cat;

2 (c) Notify the department within forty-eight hours of the
3 death or euthanasia of any dog or cat subject to the order.

4 Such notification shall include the dog or cat's individual
5 identification tag number, tattoo number, microchip number, or
6 other approved identification;

7 (d) Notify the department within forty-eight hours of any
8 dog or cat giving birth after the issuance of the order, including
9 the size of the litter; and

10 (e) Maintain on the premises any dog or cat subject
11 to the order, except that a dog or cat under one year of
12 age under contract to an individual prior to the issuance
13 of the order may be delivered to the individual pursuant to
14 the contractual obligation. The violator shall provide to the
15 department information identifying the dog or cat and the name,
16 address, and telephone number of the individual purchasing the dog
17 or cat. The department may contact the purchaser to ascertain the
18 date of the purchase agreement to ensure that the dog or cat was
19 sold prior to the stop-movement order and to determine that he or
20 she did purchase such dog or cat. No additional dogs or cats shall
21 be transferred onto the premises without written approval of the
22 department.

23 (6) The department shall reinspect the premises to
24 determine compliance within ten business days from the initial
25 inspection resulting in the stop-movement order. At the time

1 of reinspection pursuant to this subsection, if noncompliant
2 conditions continue to exist, further reinspections shall be at
3 the discretion of the department. The violator may request an
4 immediate hearing with the director.

5 Sec. 7. Section 54-629, Revised Statutes Cumulative
6 Supplement, 2008, is amended to read:

7 54-629 The department shall adopt and promulgate rules
8 and regulations to carry out the Commercial Dog and Cat Operator
9 Inspection Act. The rules and regulations may include, but are not
10 limited to, factors to be considered when the department imposes
11 an administrative fine, provisions governing record-keeping,
12 veterinary care plans, emergency veterinary care plans, and other
13 requirements for persons required to have a license, and any other
14 matter deemed necessary by the department to carry out the act. The
15 department shall use as a guideline for the humane handling, care,
16 treatment, and transportation of dogs and cats the standards of the
17 Animal and Plant Health Inspection Service of the United States
18 Department of Agriculture as set out in 9 C.F.R. 3.1 to 3.19.

19 Sec. 8. (1) A commercial breeder shall not own more than
20 two hundred fifty unaltered dogs or cats over one year of age.
21 Any dog or cat that has been neutered, spayed, otherwise rendered
22 incapable of reproduction, or certified as such by a licensed
23 veterinarian shall not count towards the limit of two hundred
24 fifty.

25 (2) As of the effective date of this act, a commercial

1 breeder who owns more than two hundred fifty unaltered dogs or cats
2 over one year of age shall be exempt from subsection (1) of this
3 section if such commercial breeder's ownership of such dogs or cats
4 does not exceed such quantity owned as of the effective date of
5 this act. The exemption of this subsection shall expire upon the
6 closure or retirement of the commercial breeder and shall not be
7 transferable.

8 Sec. 9. It shall be a violation of the Commercial Dog
9 and Cat Operator Inspection Act for any person to (a) deny access
10 to any officer, agent, employee, or appointee of the department
11 or offer any resistance to, thwart, or hinder such persons by
12 misrepresentation or concealment, (b) violate a stop-movement order
13 issued under section 6 of this act, (c) fail to disclose all
14 locations housing dogs or cats owned or controlled by such person,
15 or (d) fail to pay any administrative fine levied pursuant to
16 section 54-633.

17 Sec. 10. Section 54-640, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 54-640 A commercial breeder shall:

20 (1) Maintain housing facilities and primary enclosures in
21 a sanitary condition;

22 (2) Enable all dogs and cats to remain dry and clean;

23 (3) Provide shelter and protection from extreme
24 temperatures and weather conditions that may be uncomfortable or
25 hazardous to the dogs and cats;

1 (4) Provide sufficient shade to shelter all the dogs and
2 cats housed in the primary enclosure at one time;

3 (5) Provide dogs and cats with easy and convenient access
4 to adequate amounts of clean food and water;

5 (6) Provide adequate space appropriate to the age, size,
6 weight, and breed of dog or cat. For purposes of this subdivision,
7 adequate space means sufficient space to allow each dog and cat to
8 turn about freely, to stand, sit, and lie in a comfortable, normal
9 position, and to walk in a normal manner without the head of such
10 animal touching the top of the cage which shall be at least six
11 inches above the head of the tallest animal when the animal is
12 standing;

13 (7) Provide dogs with adequate socialization and
14 exercise. For the purpose of this subdivision, adequate
15 socialization means physical contact with other dogs and with human
16 beings, other than being fed, and adequate exercise means providing
17 the opportunity for exercise at least two times per day outside of
18 a cage or similar small enclosure except during inclement weather
19 that may be hazardous to dogs;

20 (8) Assure that a handler's hands are washed before and
21 after handling each infectious or contagious dog or cat; and

22 (9) Maintain a written veterinary care plan developed in
23 conjunction with an attending veterinarian; and

24 ~~(9)~~ (10) Provide veterinary care without delay when
25 necessary.

1 Sec. 11. Original sections 54-626 and 54-640, Reissue
2 Revised Statutes of Nebraska, and sections 54-625, 54-627, 54-628,
3 and 54-629, Revised Statutes Cumulative Supplement, 2008, are
4 repealed.